

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:INTL:B06

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Date:

March 23, 2010

TY:

Legend

Taxpayer =

Service Firm =

State A =

Year 1 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Shareholder 1 =

Shareholder 2 =

Business =

Dear :

This responds to a letter dated October 15, 2009, submitted by Service Firm (Taxpayer's authorized representative) requesting that the Internal Revenue Service ("Service") grant Taxpayer an extension of time under Treas. Reg. §§ 301.9100-1 and 301.9100-3 to file a Form 4876-A (Election to be treated as an Interest Charge DISC) for Taxpayer's first taxable year in accordance with Temp. Treas. Reg. § 1.921-1T(b)(1) and Treas. Reg. § 1.992-2(a)(1)(i).

The extension granted by this letter ruling is based upon information and representations submitted by the Taxpayer and accompanied by penalty of perjury statements required under Treas. Reg. §§ 301.9100-3(e)(2) and (3). This office has not verified any of the material submitted in support of the request for rulings. Verification of

the information, representations, and other facts may be required as part of the audit process.

Facts

Taxpayer is a domestic corporation directly owned and managed by Shareholders 1 and 2. Taxpayer was incorporated on Date 1 to be an interest charge domestic international sales corporation ("IC-DISC") engaged in Business. Taxpayer uses the accrual method of accounting and its year end is December 31.

During Year 1, Shareholders 1 & 2 and Service Firm held several telephone conferences concerning the tax benefits associated with electing IC-DISC status. On Date 2, Service Firm drafted a Form 4876-A for signatures. However, Taxpayer did not yet have an address in State A. Taxpayer obtained an address in State A, and notified Service Firm on Date 3. Service Firm revised the election to reflect the new address and returned Form 4876-A for signature on Date 4. On Date 4, Shareholders 1 & 2 signed Part II: Shareholder's Consent Statement. When Service Firm prepared to mail the signed election to the IRS, Service Firm noticed that the officer signature was missing. Because Shareholders 1 & 2 were traveling on business, and not realizing the deadline of Date 5, the last day of the 90 day period for electing IC-DISC status in a corporation's first taxable year, Service Firm had Shareholder 2 sign on Date 6 when Shareholder 2 returned home and was able to sign. The Service received Form 4876-A on Date 7 and denied the election because it was filed after the due date of Date 5.

The period of limitations on assessment under Section 6501(a) has not expired for the taxable year for which the election is being made nor for any taxable years that would have been affected by the election had Taxpayer made a timely election.

Taxpayer has requested a ruling that grants an extension of time to file Form 4876-A so that the form will be treated as timely filed within 90 days after the beginning of its first taxable year.

Law and Analysis

Section 992(b)(1)(A) provides that an election by a corporation to be treated as a DISC shall be made by such corporation for a taxable year at any time during the 90-day period immediately preceding the beginning of the taxable year, except that the Secretary may give his consent to the making of an election at such other times as he may designate.

Section 992(b)(1)(B) provides that such election shall be made in such manner as the Secretary shall prescribe and shall be valid only if all persons who are shareholders in such corporation on such first day of the first taxable year for which such election is effective consent to such election.

Temporary Treasury Regulation § 1.921-1T(b)(1) provides, in part, that a corporation electing IC-DISC status must file Form 4876-A and that a corporation electing to be treated as a IC-DISC for its first taxable year shall make its election within 90 days after the beginning of that year. Temporary Treasury Regulation § 1.921-1T(b)(1) further provides that the rules contained in Treas. Reg. § 1.992-2(a)(1), (b)(1), and (b)(3) shall apply to the manner of making the election and the manner and form of shareholder consent to the election.

Treasury Regulation § 1.992-2(a)(1)(i) provides that, except as otherwise provided in paragraphs (b)(3) and (c) of that section, the election to be treated as a domestic international sales corporation shall be valid only if the consent of every person who is a shareholder of the corporation as of the beginning of the first taxable year for which such election is effective is on or attached to the Form 4876-A when filed with the service center.

Treasury Regulation § 301.9100-1(c) provides, in part, that the Commissioner, in exercising the Commissioner's discretion, may grant a reasonable extension of time under the rules set forth in Treas. Reg. §§ 301.9100-2 and 301.9100-3 to make a regulatory election under all subtitles of the Code except subtitles E, G, H, and I.

Treasury Regulation § 301-9100-1(b) provides that a regulatory election is an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. For this purpose, an election includes an application for relief in respect of tax.

Treasury Regulation § 301.9100-3(a) provides that requests for extensions of time for regulatory elections that do not meet the requirements of Treas. Reg. § 301.9100-2 (automatic extensions) must be made under the rules of Treas. Reg. § 301.9100-3. Requests for relief subject to Treas. Reg. § 301.9100-3 will be granted when the taxpayer provides the evidence (including affidavits described in Treas. Reg. § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that the grant of relief will not prejudice the interest of the Government.

Based on the facts and representations submitted with Taxpayer's ruling request, we conclude that Taxpayer satisfies Treas. Reg. § 301.9100-3(a). Accordingly, Taxpayer is granted an extension of time of 60 days from the date of this ruling letter to file Form 4876-A required by Temp. Treas. Reg. § 1.921-1T(b)(1) and Treas. Reg. § 1.992-2(a)(1)(i). Such filing will be treated as a timely election to be treated as an IC-DISC for Taxpayer's first taxable year beginning Date 1.

The granting of an extension in this ruling letter is not a determination that Taxpayer is otherwise eligible to make the election, to submit shareholder consent statements, or to claim IC-DISC status or benefits. See Treas. Reg. § 301.9100-1(a). A copy of this letter ruling should be filed with the Form 4876-A.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

John E. Hinding
Senior Technical Reviewer, Branch 6
Office of Associate Chief Counsel (International)